

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2005

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1548

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1548, entitled "A Bill for an Act Relating to the Employer-Union Health Benefits Trust Fund."

The purpose of this bill is to amend sections 87A-5 and 87A-6 of the Hawaii Revised Statutes to change the method by which the employee-beneficiary trustees of the Board of Trustees of the Hawaii Employer-Union Health Benefits Trust Fund are selected and appointed. The bill provides that: (1) three of the employee-beneficiary trustees would be appointed by the Governor from a list of two nominees per trustee selected by each of the three largest exclusive representative employee organizations; (2) one trustee would be appointed by the Governor from a list of two nominees selected by the remaining exclusive representative employee organizations; and (3) one trustee representing retirees would be appointed by the Governor from a list of two nominees selected by mutual agreement of all the exclusive representative employee organizations.

This bill is objectionable because the proposed change severely restricts the Governor's choices in appointing the employee-beneficiary trustees, raises legal and policy concerns regarding the power delegated to private parties to restrict the Governor's choice of such trustees, and raises questions as to how the bill should be implemented with respect to the existing employee-beneficiary trustees of the Hawaii Employer-Union Health Benefits Trust Fund.

The proposed amendments raise the issue of a potential unconstitutional delegation of authority to private parties.

The courts have held that the power to select or appoint public officers cannot be delegated by the Legislature to private parties. The power to appoint a public officer is a sovereign power of government granted by the people to their elected officers and that delegating that power to a private organization accountable to no one but its own membership is unconstitutional. See *James v. Schorr*, 65A.2d 810 (Del. 1948); *Rudman v. Rini*, 356 N.E.2d 4 (III. 1978); *Sedlak v. Dick*, 887 P.2d 1119 (Kan. 1995); *Opinion of the Justices*, 150 N.E.2d 693 (Mass. 1958); and *Hetherington v. McHale*, 329 A.2d 250 (Pa. 1974).

The Hawaii Constitution indicates that the appointment of EUTF trustees shall be as provided by law. See Section 6 of Article VI of the Hawaii Constitution. Limiting the nominating list to two candidates leaves too little discretion to the appointing authority.

Finally, there could be a problem implementing this bill if the Hawaii State Teachers Association does not establish health benefit plans under a separate bill. Currently, the three exclusive representative organizations with the largest number of employee-beneficiaries are the Hawaii Government Employees Association (HGEA), United Public Workers (UPW), and the Hawaii State Teachers Association (HSTA) and there is no trustee on the EUTF board who could be said to represent the UPW. If HSTA establishes health benefits plans under another bill, its trustee would presumably resign from the EUTF board and be replaced with a UPW nominee. However, if the HSTA does not establish a health benefits plan, there conceivably could be no UPW nominated trustee on the EUTF as would be required by this bill.

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Furthermore, the current statutory procedures for selecting and appointing employee-beneficiary trustees have been working and there is no evidence that the current system needs to be fixed or changed.

For the foregoing reasons, I am returning House Bill No. 1548 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii